

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	:	CASE NO. 1:18-cr-0043
	:	
Plaintiff,	:	STATUS VIDEOCONFERENCE
vs.	:	
	:	3rd of May, 2021
	:	12:29 P.M.
YANJUN XU, also known as XU	:	
YANJUN, also known as QU HUI,	:	
also known as ZHANG HUI,	:	
	:	
Defendant.	:	

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE TIMOTHY S. BLACK, JUDGE

APPEARANCES:

For the Plaintiff:

Timothy S. Mangan, Esq.
Emily N. Glatfelter, Esq.
Assistant United States Attorneys
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202

For the Defendant:

Robert K. McBride, Esq.
Ralph William Kohnen, Esq.
Sanna-Rae Taylor, Esq.
Jeanne Marie Cors, Esq.
Taft Stettinius and Hollister
425 East Walnut Street, Suite 1800
Cincinnati, Ohio 45202

Law Clerk: Cristina V. Frankian, Esq.

Courtroom Deputy: Rebecca Santoro

Stenographer: Lisa Conley Yungblut, RDR, RMR, CRR, CRC
United States District Court
100 East Fifth Street
Cincinnati, Ohio 45202

(Videoconference at 12:29 p.m.)

2 THE COURT: Good afternoon. This is Judge Timothy
3 S. Black on the record on the criminal docket in the case of
4 United States versus Xu, 1:18-cr-43. We're here for another
5 conference by videoconference as docketed. I'd like to
6 begin by having the attorneys enter their appearances for
7 the record, but before I inquire, let me indicate that my
8 career law clerk, Cristina Frankian, is in the conference
9 with us, as is my courtroom deputy, Rebecca Santoro.

10 Ms. Lisa Conley Yungblut is the court reporter.
11 And, Ms. Yungblut, thank you for your work again today.

12 STENOGRAPHER: Yes, Your Honor. Thank you.

15 So who appears, for the record, on behalf of the
16 plaintiff, the government, the United States?

17 MR. MANGAN: Your Honor, this is Tim Mangan on
18 behalf of the government along with Emily Glatfelter.

19 THE COURT: Good morning, Mr. Mangan. Good
20 morning, Ms. Glatfelter.

21 And who appears on behalf of the defendants? If
22 defense counsel would unmute one's self, I'm prepared for
23 you to enter your appearances.

24 MR. KOHNEN: Sorry, Judge. Ralph Kohnen on behalf
25 of the defendant, Mr. Xu, as well, Your Honor.

1 MR. McBRIDE: And Bob McBride on behalf of the
2 defendant, Mr. Xu, Your Honor. Good afternoon.

3 THE COURT: Good afternoon.

4 MS. TAYLOR: Good afternoon.

5 THE COURT: Good afternoon, Ms. Taylor.

6 Is there another participant?

7 MS. CORS: Good afternoon, Your Honor. This is
8 Jeanne Cors on behalf of Mr. Xu.

9 THE COURT: Don't be shy. Good afternoon, Ms.
10 Cors.

11 Is there anybody out on the video that has not
12 entered their appearance? Very well. We have a quorum.

13 Let me kick this off with a statement, and then I
14 anticipate listening carefully to each side in due course.
15 At the last conference, the Court, this Judge, inquired
16 about a two-week continuance, at which time the government
17 advised that recent complications may actually necessitate
18 the government to seek a longer continuance.

19 Based on my understanding, the government has
20 encountered difficulties in obtaining evidence located
21 overseas as well perhaps as contacting and securing travel
22 for witnesses who reside overseas. And unless I
23 misapprehend, these difficulties are caused or exacerbated
24 by the global pandemic. So we set today's conference in
25 order for the defense to confer with their client and the

1 government to follow up on their particular issues and for
2 the parties to generally confer regarding a continuance.

3 I was advised this morning that both sides are
4 available for a trial commencing mid October but note that
5 defendant objects to any continuance; although, he
6 recognizes that the Court may continue the matter regardless
7 and toll time under the Speedy Trial Act.

8 In that regard, the Speedy Trial Act allows for the
9 automatic exclusion of time pursuant to 18 U.S.C. Section
10 3161(h) (3) for, quote: "Any period of delay resulting from
11 the absence or unavailability of the defendant or an
12 essential witness," end quote. And, quote,
13 "unavailability," end quote, is defined under that section
14 as an essential witness whose, quote, "whereabouts are known
15 but his presence for trial cannot be obtained by due
16 diligence or he resists appearing at or being returned for
17 trial," end quote.

18 Additionally, to the extent that the government
19 seeks time to obtain evidence, review it, prepare it for
20 disclosure, and for the defense to then review that
21 evidence, the Court can also extend time, can also extend
22 its ends of justice finding due to the nature and complexity
23 of the prosecution and to offer adequate time for
24 preparation.

25 But, first, I would ask the government to

1 memorialize its request for the continuance and specify its
2 basis for needing a continuance, and then I will hear from
3 the defense as to its objections or anything further. So on
4 behalf of the government, will one of you be responsive?

5 MR. MANGAN: Yes, Your Honor. This is Tim Mangan.
6 Following up on the comments I made at the prior conference
7 last week, we would be requesting a continuance because we
8 have made a request through an MLAT process to the Republic
9 of France for testimony from several individuals. We are
10 still awaiting a response to that MLAT request. So pursuant
11 to the Speedy Trial Act and the provisions cited, both
12 related to the availability of witnesses and as well as to
13 requests to foreign government, we would ask for a
14 continuance on that basis.

15 THE COURT: And you're comfortable with a date in
16 mid October?

17 MR. MANGAN: We are, Your Honor, yes.

18 THE COURT: Very well. Does the defense wish to be
19 heard, please?

20 MR. KOHNEN: Your Honor, the only thing that I
21 would ask perhaps for the benefit of the record which we all
22 share is that Mr. Mangan share a little more detail with us
23 on exactly who those witnesses or that witness is or at
24 least some description of how they qualify as essential
25 witnesses for that ground of the Court's finding.

1 THE COURT: I don't think that's an unreasonable
2 request. Is the government in a position now to respond?

3 MR. MANGAN: We can, Your Honor. This request
4 pertains to what's been described in other briefings as the
5 Safran Aviation hacking, and I can go into greater detail
6 about what that entails. But essentially, there was an
7 incident that we are alleging that the defendant, Mr. Xu,
8 was involved in as far as coordinating and participating in
9 the malware hacking of Safran Aviation through an employee
10 of Safran. What we are seeking in the MLAT is the testimony
11 of the individual whose laptop was compromised as well as
12 another company representative who can help substantiate
13 some of the context regarding some of the other participants
14 as well as authenticate any other evidence that's needed
15 relative to that hacking.

16 So that is the substance of the issue that we
17 intend to present as part of our case in chief, and having
18 witnesses from Safran, they are essential to that particular
19 part of our case. And so, Your Honor, we would submit that
20 this does qualify as an essential witness to our case.

21 THE COURT: And where are they located?

22 MR. MANGAN: In France, and the company is based in
23 France. In order for us to work through the company, we
24 need to ask the government of France for their permission to
25 sort of go through that process, and so right now, we are

1 waiting on the government of France to give us that
2 permission in order to start the process with the witnesses.

3 THE COURT: Very well. Was that sufficiently
4 responsive, in your opinion, Mr. Kohnen?

5 MR. KOHNEN: Absolutely it is, Your Honor. Thanks,
6 Tim.

7 THE COURT: You're speaking --

8 MR. KOHNEN: Tim Mangan.

9 THE COURT: Very well. Either side need to be
10 heard further on the calendar issue before the Court acts
11 now, from the government? Does the government need to be
12 heard further before I act on the issue of the calendar now?

13 MR. MANGAN: No, Your Honor. No, Your Honor.
14 Thank you.

15 THE COURT: Very well. And the defense?

16 MR. KOHNEN: No, thank you, Your Honor.

17 THE COURT: Very well. Well, the Court continues
18 the trial, jury trial, to October 18th, 2021, because I was
19 advised that, although the defendants object to any
20 continuance, their attorneys are available, and the
21 government attorneys are available as well, and the timing
22 is appropriate given the government's presentation. So I
23 continue the matter for jury trial until October 18th, 2021.

24 The Court finds that the government has indicated
25 the unavailability of, it sounds like, two essential

1 witnesses, and, accordingly, time is automatically tolled to
2 afford adequate time to secure the witnesses' appearances.
3 Time is also tolled because, additionally, the Court finds
4 that, despite diligent efforts, the government requires
5 additional time to obtain, review, and disclose evidence
6 located abroad and witnesses.

7 And the defense, in turn -- bear with me. May not
8 need to put on this ends of justice, but just to double it
9 up, the Court finds that, despite diligent efforts, the
10 government requires additional time to obtain, review, and
11 disclose evidence and witnesses located abroad. Defendants
12 will require time perhaps to review. Additionally, the
13 Court confirms and continues to find that due to the
14 complexity of the case and the nature of the prosecution,
15 it's unreasonable to expect adequate preparation for the
16 trial within the time limits established under the Speedy
17 Trial Act. And so the Court makes an ends of justice
18 finding on that basis and time will be tolled until the new
19 trial date.

20 I appreciate your presentations. Is there more we
21 need to discuss today from either side, from the government?

22 MR. MANGAN: Your Honor, I think the only question
23 would be what the rest of the calendar would look like in
24 terms of deadlines. We can certainly work that out by
25 e-mail with Ms. Frankian, if you would like.

1 THE COURT: Yeah, I would propose you work it out
2 with Mr. Kohnen's team, and Ms. Frankian will be responsive
3 to you all in that regard. I'm glad you raised the issue.

4 Does the defense wish to be heard on anything
5 further at this time?

6 MR. KOHNEN: No, Your Honor. Thank you.

7 THE COURT: Very well. Will you give me a moment,
8 please?

9 Very well. I appreciate you timely participating
10 in this conference, and I am going to adjourned by leaving
11 the meeting, and I want you to stay well. Take care. I'm
12 leaving the meeting and adjourning the conference. Goodbye.

13 (Proceedings concluded at 12:44 p.m.)

14 **C E R T I F I C A T E**

15 I certify that the foregoing is a correct transcript of
16 the record of proceedings in the above-entitled matter
17 prepared from my stenotype notes.

18 */s/ Lisa Conley Yungblut*

19 LISA CONLEY YUNGBLUT, RDR, RMR, CRR, CRC

20 05/05/2021

21 DATE

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